

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kimberly Eldridge	Team: Team # 6	CCRB Case #: 200702497	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 02/15/2007 7:00 PM	Location of Incident: 80th Street & Juniper Valley Blvd; inside the 104th PCT	Precinct: 104	18 Mo. SOL 8/15/2008	EO SOL 8/15/2008	
Date/Time CV Reported Mon, 02/19/2007 11:04 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/21/2007 5:44 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Lee	20964	930421	NARCBQN
2. DT2 Vincent Esposito	05930	911249	NARCBQN
3. Officers			
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Craig Kearney	03326	911289	NARCBQN
2. DT3 Michael Donovan	01855	910778	NARCBQN
3. DT3 Donald Haines	06178	928448	NARCBQN
4. POM Robert Hawkins	07777	930328	NARCBQN
5. DT3 Raymond Paltoo	04001	911346	NARCBQN
6. POM Robert Anderson	26419	926505	NARCBQN
7. DT3 Edgar Bayas	01324	921142	NARCBQN

Officer(s)	Allegation	Investigator Recommendation
A.POM James Lee	Abuse: In the vicinity of 80th Street and Juniper Valley Boulevard in Queens, Officer James Lee drew his gun.	
B.POM James Lee	Abuse: In the vicinity of 80th Street and Juniper Valley Boulevard in Queens, Officer James Lee damaged § 87(2)(b)'s property.	
C. Officers	Force: In the vicinity of 80th Street and Juniper Valley Boulevard in Queens, officers used physical force against § 87(2)(b)	
D. An officer	Force: In the vicinity of 80th Street and Juniper Valley Boulevard in Queens, an officer used physical force against § 87(2)(b)	
E.DT2 Vincent Esposito	Abuse: Inside of the 104th Precinct, Detective Vincent Esposito strip-searched § 87(2)(b)	

Synopsis

On February 15, 2007, at approximately 6:30PM, § 87(2)(b) and § 87(2)(b) were inside of § 87(2)(b)'s blue Toyota Celica in Queens. They exited the Long Island Expressway via the 69th Street and 59th Drive exit. Once they were off the expressway, Officer James Lee approached § 87(2)(b)'s vehicle with his gun drawn (Allegation A). § 87(2)(b) began to flee in his vehicle, so Officer Lee drew his asp from his person and struck the rear window on the passenger side of § 87(2)(b)'s vehicle, causing it to break (Allegation B). § 87(2)(b) headed the wrong way down a one-way street, at the end of which, § 87(2)(b) allegedly saw flashing lights. It was at that time that § 87(2)(b) realized that he was being chased by the police. § 87(2)(b) allegedly stopped his vehicle and as he did so, a van lightly struck it from behind. § 87(2)(b) remained in his vehicle with his hands in the air as Sergeant Kearney and Detective Donovan approached the driver's side door. Several other officers exited their vehicles and approached § 87(2)(b)'s vehicle. Two to four police officers, including Sergeant Kearney and Detective Donovan, opened § 87(2)(b)'s driver's side door and dragged him out of the vehicle. An unidentified officer then allegedly punched § 87(2)(b) in the face two or three times. Between all of the officers present, § 87(2)(b) alleged that they punched him in the face anywhere from ten to fifteen times (Allegation C). § 87(2)(b) was then placed chest-down onto the ground, at which time an unidentified officer allegedly kicked him in the back of the head. At one point, § 87(2)(b) who was also on the ground, attempted to speak with § 87(2)(b) but an unidentified officer allegedly kicked him in the face (Allegation D). § 87(2)(b) and § 87(2)(b) were eventually placed into the prisoner van and were transported to the 104th Precinct. Once at the precinct, Detective Esposito allegedly strip-searched § 87(2)(b) (Allegation E). § 87(2)(b) and § 87(2)(b) received numerous charges, including criminal sale of a controlled substance, assault, and resisting arrest. As a result of the incident, § 87(2)(b) sustained lacerations to his face and the back of his head. § 87(2)(b) received an injury to his left eye. Both were treated at § 87(2)(b) Hospital.

§ 87(2)(b), § 87(2)(g)

This case was reassigned to Investigator Eldridge on September 4, 2007 following Investigator Christopher Landino's departure.

Summary of Complaint

On February 15, 2007, § 87(2)(b) spoke with IAB about this incident. On February 21, 2007, IAB referred this case to the CCRB (enc. 8A-E). On March 16, 2007, § 87(2)(b) provided the CCRB with a phone statement (enc. 10). On April 10, 2007, § 87(2)(b) appeared at the CCRB for an interview (enc. 11A-G). The inconsistencies of § 87(2)(b)'s statements are noted below.

On February 15, 2007, at approximately 7:00PM, § 87(2)(b) driving with his friend § 87(2)(b) in § 87(2)(b)'s blue Toyota Celica, drove off of the expressway by 59th Drive and 69th Street in Queens. They were coming into Queens from Bayshore, Long Island, and § 87(2)(b) was driving them to meet § 87(2)(b)'s brother. § 87(2)(b) took a wrong turn off of the expressway and was about to drive his car on the roads he was unfamiliar with in order to get back onto the expressway.

§ 87(2)(b) was driving slowly when PO1, identified through the investigation as Officer James Lee, used a "retraction tool" to break his vehicle's side window. Officer Lee then drew his gun as § 87(2)(b) quickly drove his car away. As § 87(2)(b) was driving away, Officer Lee smashed the small back window. § 87(2)(b) drove away because he believed he was being robbed. Sometime after the incident, § 87(2)(b) found out that he scratched a Lexus as he fled from Officer Lee.

§ 87(2)(b) made two right turns and turned down a one-way street, driving about 40 miles per hour in the wrong direction. § 87(2)(b) realized it was a one-way street but was panicked and thought that doing so would get him away from danger. § 87(2)(b) then saw vehicles with flashing lights at the end of the street, and realizing he was being chased by police officers, stopped his vehicle. When he stopped his car, a van lightly struck his vehicle from behind. § 87(2)(b) remained in his vehicle with his hands in the air as two to four officers, including Sergeant Craig Kearney and Detective Michael Donovan who were identified through the investigation, approached his driver's side door.

About eight officers in all got out of their vehicles, which were parked in front of and behind § 87(2)(b)'s vehicle. § 87(2)(b) remained inside of § 87(2)(b)'s vehicle. Sergeant Kearney and Detective Donovan opened § 87(2)(b)'s driver's side door and dragged him out of the vehicle. An unidentified officer

punched § 87(2)(b) in his face about two times. § 87(2)(b) heard other officers refer to this officer as “James.” The officer told § 87(2)(b) that he was right-handed and asked § 87(2)(b) if he felt he could break § 87(2)(b)’s nose, at which time he punched § 87(2)(b) in his nose with his right hand.

§ 87(2)(b) believed that the police officers punched him in the face ten to fifteen times. § 87(2)(b) was placed chest-down onto the ground, at which time an unidentified officer kicked him in the back of his head. One of the officers, upon pulling him from the car, said, “Welcome to Queens.” At no time did § 87(2)(b) struggle with officers or resist arrest. At the beginning of his interview, § 87(2)(b) stated that he had no knowledge of what happened with § 87(2)(b). § 87(2)(b) did not see § 87(2)(b) until the incident was over and they were both in handcuffs. Later in his interview, however, § 87(2)(b) stated that he had been moved to the passenger side of his vehicle and was lying on the ground when § 87(2)(b) who was also on the ground, attempted to speak with him. At that time, an unidentified officer kicked § 87(2)(b) in his face. As a result of the kick, § 87(2)(b) sustained a swollen left eye. § 87(2)(b)’s arrest photo confirms that he received an injury to his left eye (enc. 13).

After being handcuffed, § 87(2)(b) and § 87(2)(b) were placed into the prisoner van. In his phone statement, § 87(2)(b) stated that at some point, he asked for medical treatment and it was denied. In his interview statement, however, § 87(2)(b) stated that Officer Esposito, whom § 87(2)(b) identified by name and the investigation determined to be Detective Vincent Esposito, stated to § 87(2)(b) “You’re refusing medical treatment? Good.” Later in the interview, § 87(2)(b) stated that he never asked to go to the hospital. § 87(2)(b) was bleeding very badly, but once inside the prisoner van, he did not have any further interaction with police officers. § 87(2)(b) had a fractured nose and a fractured left cheekbone. He also had numerous cuts on his face. § 87(2)(b)’s arrest photo confirms that he had injuries to his nose and the left side of his face (enc. 12).

§ 87(2)(b) and § 87(2)(b) were taken to the 104th Precinct at which time an unidentified officer stated that they needed medical attention. Shortly thereafter, Detective Esposito and an unidentified officer took § 87(2)(b) into the bathroom at the back of the station house and strip-searched him. The officers repeatedly asked him “where is it?” § 87(2)(b) told the officers he had nothing on his person and got completely naked in front of the officers. Nothing illegal was found on his person. After the strip-search was over, § 87(2)(b) was transported to § 87(2)(b) Hospital in a police vehicle. Police officers stayed with him as he was treated. § 87(2)(b) received two staples to the back of his head. § 87(2)(b) told the hospital staff, “I was beaten up by police” (enc. 14E).

§ 87(2)(b) did not know why he was arrested until he got to Central Booking. However, § 87(2)(b) eventually pleaded guilty to a misdemeanor drug charge because drugs were found in the console of his vehicle.

Results of Investigation

Victim Statement: § 87(2)(b)

Investigator Landino sent § 87(2)(b) two please call letters at the address that was provided on the IAB referral. § 87(2)(b) did not respond to either of the letters. The IAB referral did not contain a phone number for § 87(2)(b). A search of whitepages.com did not yield a phone number for § 87(2)(b). A search of LexisNexis provided two possible phone numbers for § 87(2)(b). Between September 26, 2007 and December 6, 2007, the undersigned investigator sent § 87(2)(b) two please call letters and attempted to contact him at the LexisNexis provided numbers five times. The first number was disconnected. The second number belonged to § 87(2)(b)’s grandmother. On three occasions the investigator called the number and spoke to one of § 87(2)(b)’s relatives who stated that § 87(2)(b) was not available, and took a message for § 87(2)(b) in which the investigator asked that he call her back. To date, the investigator has not heard from § 87(2)(b). Therefore, the CCRB was unable to obtain a statement from him.

Subject Officer Statement: Officer James Lee

On December 11, 2007, Officer James Lee appeared at the CCRB for an interview (enc. 21A-C). Officer Lee is a 29 year old Asian male who is 5’10” tall and weighs 160 pounds. Officer Lee has brown hair and black eyes. Since the date of this incident, Officer Lee has been promoted to the rank of Sergeant.

On February 15, 2007, Officer Lee worked a tour that began at approximately 11:00AM and ended at approximately 7:00PM. Officer Lee and his partner, Detective Bayas, were dressed in plainclothes and assigned to an unmarked silver Toyota. Officer Lee and Detective Bayas worked as part of a team with other officers from Queens North Narcotics. Officer Lee had one entry in his memo book that was relevant to the incident, and it stated that at approximately 6:30PM his team placed two individuals under arrest at the intersection of 80th Street

and Juniper Valley Boulevard (enc. 15A-C). The arrests were assigned to Officer Lee and he completed a complaint report and arrest reports for both of the arrestees (enc. 16A-B, 17, 18A-B, 19, and 20A-B). The statements in those reports were substantively consistent and state that § 87(2)(b) and § 87(2)(b) fled from police, threw heroin out of their car window, collided with a civilian vehicle and two police vehicles, resisted arrest, and were found to be in possession of crack and heroin.

At approximately 7:00PM, Officer Lee and Detective Bayas were approximately seven or eight blocks away from the intersection of 80th Street and Juniper Valley Boulevard in Queens. § 87(2)(e), § 87(2)(f)

Officer Lee and Detective Bayas observed § 87(2)(b)'s vehicle for five minutes before they attempted to stop it. Officer Lee did not remember the description of the vehicle, but noted that it was a small two door sedan. Officer Lee and Detective Bayas parked their vehicle two car lengths behind § 87(2)(b)'s vehicle, which had stopped in the street. Officer Lee put on the vehicle's lights but did not put on the sirens. Officer Lee exited his vehicle and approached the front passenger side of § 87(2)(b)'s vehicle on foot. Detective Bayas stayed inside of their RMP. Officer Lee told § 87(2)(b) to stop four or five times. Officer Lee also showed § 87(2)(b) and § 87(2)(b) his shield. Officer Lee directed § 87(2)(b) to pull the vehicle over. § 87(2)(b) did not comply with Officer Lee's directives, and proceeded to drive his vehicle away from Officer Lee. When asked if he had his gun drawn upon approaching the vehicle, Officer Lee first responded that he did, but went on to state that he drew his gun because § 87(2)(b) refused his lawful order to pull the vehicle over, told him to "go fuck yourself," and tried to hit him with his vehicle. § 87(2)(e), § 87(2)(f)

When § 87(2)(b) began to drive away, Officer Lee pulled out his asp and struck the rear passenger window. The force of the blow was enough to break the window. Officer Lee insisted that he struck the window because he feared that the vehicle would hit him, and he believed that breaking the window would help him to "protect his life." Officer Lee noted that the vehicle was on the left side of the street, and he was standing on the passenger side of § 87(2)(b)'s vehicle between his vehicle and a parked car. When asked what the purpose of striking the window was, Officer Lee again insisted that he broke the window to "protect his life."

The next time Officer Lee saw § 87(2)(b) and § 87(2)(b) they were at the intersection of 80th Street and Juniper Valley Boulevard. By that time, both § 87(2)(b) and § 87(2)(b) were handcuffed outside of the vehicle and an ambulance was at the scene. § 87(2)(b) and § 87(2)(b) were standing in the street and they were not saying anything. Officer Lee could not tell if either of them was injured and he did not hear them complain of any pain or injuries. At no time did Officer Lee punch, kick, or otherwise strike either of them in their faces, heads, or any other parts of their bodies. Officer Lee did not witness any other officer do so. The investigator showed Officer Lee § 87(2)(b)'s arrest photo. While § 87(2)(b) had obvious injuries to his nose and the upper left part of his face, Officer Lee did not know how § 87(2)(b) obtained these injuries and he did not recall seeing § 87(2)(b) with these injuries. The investigator also showed Officer Lee § 87(2)(b)'s arrest photo. Officer Lee acknowledged that § 87(2)(b) had an injury to his left eye, but could not say how or when that injury was obtained. Officer Lee noted that he was assigned these arrests because Detective Donovan, who was the original arresting officer, was somehow injured during the incident. Officer Lee did not know how Detective Donovan was injured or what his injuries were. Officer Lee noted that he arrived at the scene at the conclusion of the incident and did not know what happened between the time the car pulled away from him and he arrived at the scene to see the suspects in handcuffs. Officer Lee was only at the scene for a few minutes before § 87(2)(b) and § 87(2)(b) were placed into the prisoner van and transported to the 104th Precinct. Officer Lee did not transport them to the precinct and did not know which officers did so. Officer Lee did not see either § 87(2)(b) or § 87(2)(b) at the precinct and noted that both men were transported to the hospital. Officer Lee did not strip-search § 87(2)(b) and did not know if anyone did.

Witness Officer Statement: Detective Edgar Bayas

On February 22, 2008 Detective Edgar Bayas appeared at the CCRB for an interview (enc. 25A-C). Detective Bayas is § 87(2)(b)

On February 15, 2007, Detective Bayas worked a tour that began at 10:00AM and ended at 6:33PM. Detective Bayas was part of the Queens North Narcotics Field Team, which conducted buy and bust operations. Detective Bayas and his partner, Officer Lee, were dressed in plainclothes and were assigned to an unmarked vehicle that he could not describe. Detective Bayas did not have any memo book entries regarding this incident (enc. 24).

At some point on the evening of the incident, Detective Bayas and Officer Lee received a radio transmission from one of the other members of their field team about a vehicle that had something to do with narcotics. The call contained a description of the vehicle and the location where it could be found. Detective Bayas and Officer Lee spotted the vehicle in question and noted that it was the only vehicle in the area that fit the description. The area was residential and traffic was heavy. Streetlights in the area provided lighting. Detective Bayas and Officer Lee observed the vehicle for a few minutes before stopping it. There were two individuals, identified as § 87(2)(b) and § 87(2)(b) in the vehicle. The driver of the vehicle, § 87(2)(b) pulled up behind another vehicle. Detective Bayas, who was driving, pulled up behind a vehicle that was double parked. There were vehicles parked on both sides of the street. § 87(2)(b)'s vehicle stopped, and it was at that time that one of the members of the field team instructed Detective Bayas and Officer Lee to stop the vehicle. Officer Lee exited the RMP and approached the passenger side of § 87(2)(b)'s vehicle on foot. Officer Lee stood between a parked car and § 87(2)(b)'s vehicle. Officer Lee did not have his gun drawn when he approached the vehicle. At no time during the incident did Officer Lee brandish his gun. Officer Lee identified himself as a police officer and instructed § 87(2)(b) to pull the vehicle over. § 87(2)(b) took off immediately. Detective Bayas believed that § 87(2)(b) actually drove towards Officer Lee and almost ran him over, but Detective Bayas did not know if the vehicle actually hit Officer Lee.

At some point, Officer Lee pulled out his asp. Detective Bayas was not sure when he did so, but believed that it was when the vehicle began to flee. Officer Lee did not have his asp out when he first approached the vehicle. Officer Lee used his asp to hit the window of § 87(2)(b)'s vehicle. Detective Bayas did not know which window Officer Lee hit, but noted that it was on the rear passenger side of the vehicle. The force of the blow broke the window. Officer Lee did not make any more contact with the vehicle because it drove away.

Detective Bayas proceeded to follow the vehicle in his RMP. Detective Bayas radioed to the field team and informed them of what was happening. The field team responded by telling Detective Bayas to stay back, pick up Officer Lee, and to attempt to retrieve narcotics that one of the suspects allegedly threw out of the car window. Detective Bayas did not see either individual throw anything out of the window. Detective Bayas backtracked and went back to the original scene to canvass for narcotics and other evidence and to pick up Officer Lee. It was at that time that Detective Bayas and Officer Lee learned that the field team stopped the § 87(2)(b)'s vehicle at 80th Street and Juniper Valley Boulevard, which was a few blocks away from where Detective Bayas and Officer Lee first encountered the vehicle.

A few minutes later, Detective Bayas and Officer Lee arrived at the intersection and observed § 87(2)(b) and § 87(2)(b) standing outside of the vehicle with their hands handcuffed behind their backs. Both of them were cursing at the officers and not complying with the officers' orders to stand still. At no point did Detective Bayas or any other officer he witnessed physically interact with either § 87(2)(b) or § 87(2)(b) by punching, kicking, or otherwise striking them in their heads or bodies. One of the individuals, Detective Bayas did not know which one, had a bruise on his face and appeared to be bleeding. At no point did either of the suspects verbally complain of any injury or pain. Detective Bayas did not recall if any of the officers were injured. Detective Bayas did not see any damage on § 87(2)(b)'s vehicle or on any of the police vehicles. Sergeant Kearney instructed Detective Bayas to go back to another location to see if there were any narcotics to be found. Detective Bayas complied with the order, but did not recall if he went by himself or with another officer. Detective Bayas did not recover any narcotics. Detective Bayas did not know if any narcotics were recovered at any point in relation to this incident. Detective Bayas did not know if either of the individuals had narcotics or weapons on their person.

When Detective Bayas could not find anything, he returned to the scene. By that time, § 87(2)(b) and § 87(2)(b) were inside of the prisoner van. Detective Bayas saw the individuals again as they were being led into the 104th Precinct, but he did not see them once they were inside of the precinct. Detective Bayas saw Detective Esposito in the precinct, but did not witness any interactions between Detective Esposito and the suspects. Detective Bayas did not know if either suspect was strip-searched. Detective Bayas did not hear Detective Esposito mention anything about strip-searching either individual.

Subject Officer Statement: Detective Vincent Esposito

On March 11, 2008, Detective Vincent Esposito appeared at the CCRB for an interview (enc. 23A-B). Detective Esposito is a § 87(2)(b).

On February 15, 2007, Detective Esposito worked a tour that began at 1:00PM and ended at 9:00PM. Detective Esposito was part of a field team with Queens North Narcotics. Detective Esposito and his partner,

Officer Anderson, were in plainclothes and were assigned to the prisoner van, which was a silver Ford. Detective Esposito had four entries in his memo book that were relevant to this incident (enc. 22). They state that Detective Esposito left the 104th Precinct to head to the scene and then removed the injured prisoners to § 87(2)(b) Hospital.

At approximately 6:30PM, Detective Esposito and Officer Anderson were inside the confines of the 104th Precinct processing the Narcotics' arrests from an incident that previously occurred that evening. As they were doing so, they heard a 10-85, call for assistance, come over the division radio. Detective Esposito and Officer Anderson finished processing and placing their prisoners in cells, and asked the supervisor on duty if he could watch their prisoners. The supervisor agreed, so Detective Esposito and Officer Anderson headed to the incident location.

When Detective Esposito arrived at the scene, both suspects, identified as § 87(2)(b) and § 87(2)(b) were handcuffed and standing near the side of their vehicle. At no time did Detective Esposito hit, kick, or otherwise strike either of them on any part of their body. At no time did Detective Esposito witness any other officer do so. Detective Esposito noticed that both of them were injured, but did not recall the extent of those injuries. Detective Esposito did note that between them, § 87(2)(b) and § 87(2)(b) had bruises, cuts, and abrasions. Moreover, one of the individuals, Detective Esposito did not know which one, received staples for one of his injuries. The investigator showed Detective Esposito the arrest photos for § 87(2)(b) and § 87(2)(b). Detective Esposito recognized them, but he still could not say which one received the staples. Some of the officers of the field team were also injured, but Detective Esposito did not know who sustained what injuries or how those injuries were obtained.

No one spoke with Detective Esposito about what happened before he arrived at the scene and Detective Esposito did not inquire about those events. Detective Esposito only knew that the incident was narcotics related. Detective Esposito did not know, however, what if any narcotics were recovered. Detective Esposito also knew that there was some sort of car accident. The field team's black Explorer had damage to its front bumper. § 87(2)(b)'s vehicle was old and beat up, but Detective Esposito noticed damage near the rear of the vehicle.

§ 87(2)(b) and § 87(2)(b) were searched before they were placed into the prisoner van, but Detective Esposito did not conduct the searches and did not witness them. Detective Esposito and Officer Anderson were only at the scene for ten to fifteen minutes before both suspects were placed into the prisoner van and transported to the 104th Precinct. When they arrived at the precinct, Detective Esposito requested EMS to the precinct. It was necessary to do so because both of the suspects were bleeding and procedure calls for injuries of that nature to be treated by EMS. EMS arrived at the precinct and tended to § 87(2)(b) and § 87(2)(b) as they were in the holding cell area. After EMS left, Detective Esposito transported them to § 87(2)(b) Hospital.

Before placing § 87(2)(b) and § 87(2)(b) into the prisoner van to be transported to the hospital, Detective Esposito conducted a "thorough search of their bodies." Detective Esposito searched all of the pockets of their clothing, removed any belts and shoelaces they had, checked their shoes and the inside of their socks, and opened the button and zipper of their pants to make sure that there was nothing in the waistband area. Detective Esposito then frisked their arms and legs. At no point did Detective Esposito or any officer he witnessed strip-search either suspect. Both suspects were in Detective Esposito's custody and they spent the entire time in the holding cells and at no time were they strip-searched. At no point did Detective Esposito witness or order the suspects to remove any articles of clothing. At no point did either individual complain of being strip-searched. Detective Esposito stayed with the suspects while they were treated at the hospital.

Witness Officer Statement: Sergeant Craig Kearney

On January 30, 2008, Sergeant Craig Kearney appeared at the CCRB for an interview (enc. 27A-C). Sergeant Kearney is a § 87(2)(b)

On February 15, 2008, Sergeant Kearney worked a tour that began at 9:25AM and ended at 6:00PM. Sergeant Kearney was the leader of his narcotics field team, and on this date they conducted buy and bust operations and observation arrests in the confines of the 104th Precinct and the 112th Precinct. Sergeant Kearney and Detective Donovan were assigned to an unmarked blue Ford Explorer. Detective Donovan was the driver and Sergeant Kearney was in the passenger seat. Sergeant Kearney had one entry in his memo book that was relevant to this incident and it stated that § 87(2)(b) and § 87(2)(b) were arrested at 80th Street and Juniper Valley Boulevard on various charges (enc. 26A-C).

At approximately 6:30PM, Sergeant Kearney and his field team were at the intersection of 69th Street and the Long Island Expressway, § 87(2)(e), § 87(2)(f)

The field team spread out in the vicinity of the above mentioned location. Officer Lee and Detective Bayas were the first to observe the vehicle. § 87(2)(e), § 87(2)(f)

§ 87(2)(b). A short time later, either Officer Lee or Detective Bayas radioed to the team that the vehicle fled when they attempted to stop it. Sergeant Kearney did not witness what happened when Officer Lee and Detective Bayas attempted to stop the vehicle because he could not see them from where his vehicle was parked. Another member of the field team radioed that they were in pursuit of the vehicle. Sergeant Kearney and Detective Donovan were about to join in the chase when they spotted the vehicle speeding towards their direction. The driver of the vehicle, § 87(2)(b) almost drove into the side of Sergeant Kearney's vehicle and Detective Donovan, who was driving, had to swerve to get out of the way. After § 87(2)(b)'s vehicle passed them, Detective Donovan joined in the chase. § 87(2)(b) continued to drive at a high rate of speed through intersections, disregarding traffic signals and stop lights. § 87(2)(b) drove the wrong way down a one-way street, at which time § 87(2)(b) sideswiped a female who was in her own vehicle. The female did not sustain any injuries, and her vehicle did not appear to be damaged. § 87(2)(b) continued to drive without stopping. At that time, the passenger, § 87(2)(b) leaned halfway out of the passenger window and threw what Sergeant Kearney believed to be narcotics from the vehicle. The package was long and rectangular. Sergeant Kearney did not know what color the package was because it was hard to see the details of the package in the dark.

Sergeant Kearney caught up with § 87(2)(b) at the intersection of 80th Street and Juniper Valley Boulevard. The field team tried to box in the vehicle to prevent it from going any further. Detective Donovan pulled their vehicle in front of § 87(2)(b)'s vehicle and the secondary vehicle, the black Explorer that contained Detective Haines, Officer Hawkins, and Detective Paltoo, pulled up behind § 87(2)(b)'s vehicle. § 87(2)(b) stopped his vehicle between the two police vehicles. Sergeant Kearney began to exit his vehicle via the passenger side when § 87(2)(b) put his vehicle in drive and drove into Sergeant Kearney's vehicle. § 87(2)(b) struck the vehicle just behind the front passenger door. Sergeant Kearney did not issue any directives at this time because his main goal was to avoid getting hit by § 87(2)(b)'s vehicle. If he did not get back into his own vehicle, § 87(2)(b)'s vehicle would have smashed him between the two vehicles. § 87(2)(b) then put the vehicle in reverse and hit the black Explorer. The airbags in the black Explorer deployed. Sergeant Kearney exited his vehicle and proceeded towards § 87(2)(b)'s vehicle with his gun drawn. Sergeant Kearney believed that shots were fired because he heard a loud pop, but he did not realize that the noise was from the deployment of the airbags. Sergeant Kearney and Detective Donovan approached the driver's side of § 87(2)(b)'s vehicle while Detective Haines, Detective Paltoo, and Officer Hawkins approached the passenger side. The vehicle was still in drive, so Detective Donovan reached inside of the vehicle via the driver's side to try to put the car in park and turn off the ignition. § 87(2)(b) resisted by using his hands to strike Detective Donovan in his arms, face, and upper body. Sergeant Kearney then tried to reach into the vehicle so that he could grab § 87(2)(b)'s hands to prevent him from striking Detective Donovan. After some time, Detective Donovan was able to shut the car off or put it in park. Sergeant Kearney ordered § 87(2)(b) out of the vehicle, but § 87(2)(b) would not exit. Detective Donovan and Sergeant Kearney had to pull § 87(2)(b) out of the vehicle.

At the time of the incident, it was raining and the roads were icy. Moreover, it had snowed heavily the night before. When the officers pulled § 87(2)(b) out of the vehicle, they lost their footing and fell to the ground. Even when they were on the ground, § 87(2)(b) resisted by punching and kicking the officers and refusing to be handcuffed. At one point, § 87(2)(b) kicked Sergeant Kearney in the wrist causing it to bend backward. As a result, Sergeant Kearney sustained a sprained wrist. Four other officers were injured during the incident, but Sergeant Kearney did not recall which officers they were or at what point they were injured. Their injuries included neck, back, and wrist sprains, lacerations, and contusions.

While they were on the ground, the officers repeatedly ordered § 87(2)(b) to surrender his arms, but § 87(2)(b) continued to punch and kick at the officers. At no point did Sergeant Kearney or any officer he witnessed repeatedly punch, kick, or otherwise strike § 87(2)(b) in his head or body. The only force that they used was the force that they believed was necessary to overcome the assault. Sergeant Kearney did not recall who was able to finally handcuff § 87(2)(b). Sergeant Kearney did not witness what happened with § 87(2)(b) because he was focused on § 87(2)(b). Officer Lee and Detective Bayas did not arrive at the scene until after § 87(2)(b) and § 87(2)(b) had already been apprehended.

After they managed to handcuff § 87(2)(b) and get him to his feet, Sergeant Kearney realized that § 87(2)(b) was bleeding. § 87(2)(b) did not verbally express any pain or injury. The officers placed § 87(2)(b)

into the prisoner van and an ambulance was called to the scene. The ambulance responded, but § 87(2)(b) refused treatment at that time. § 87(2)(b) was also injured, but Sergeant Kearney was not sure where or how he was injured. The ambulance left the scene. During the incident, the field team called a 10-13 (police officer call for assistance), so by this time uniformed sectors began to arrive. § 87(2)(b) and § 87(2)(b) were transported to the 104th Precinct. At this time, Officer Lee and Detective Bayas explained that when they first attempted to stop the vehicle, § 87(2)(b) fled, and in the process, almost ran Officer Lee down.

Sergeant Kearney next saw § 87(2)(b) at the 104th Precinct as he was being led out of the prisoner van. § 87(2)(b) was bleeding more now, so Sergeant Kearney ordered that he be removed to § 87(2)(b) Hospital. Sergeant Kearney was not sure if § 87(2)(b) and § 87(2)(b) went into the precinct or went straight to the hospital because he and the rest of the injured officers went to § 87(2)(b) Hospital. Sergeant Kearney did not see or have further contact with § 87(2)(b) or § 87(2)(b) after they were first apprehended. Sergeant Kearney was not present for their arrest processing so he did not know what, if anything, happened at the precinct. Sergeant Kearney did not witness either of them being strip-searched and he did not participate in any strip-search related to this incident.

Witness Officer Statement: Detective Michael Donovan

On March 11, 2008, Detective Michael Donovan appeared for an interview at the CCRB (enc. 30A-C). Detective Donovan is a § 87(2)(b)

On February 15, 2007, Detective Donovan worked a tour that began at 1:00PM and ended at 9:00PM. Detective Donovan was part of the Queens North Narcotics field team. Detective Donovan and his partner, Sergeant Craig Kearney, were dressed in plainclothes and were assigned to an unmarked blue Ford explorer. Detective Donovan had three entries in his memo book that were relevant to this incident (enc. 28A). They state that the field team arrested two individuals at the intersection of 80th Street and Juniper Valley Boulevard and that during the incident, Detective Donovan was injured. Detective Donovan completed an AIDED report regarding those injuries (enc. 29A-E).

§ 87(2)(e), § 87(2)(f)

After the transmission, the field team moved in to pull the vehicle over. Detective Donovan did not know which officers were to stop the vehicle, but shortly thereafter, either Officer Lee or Detective Bayas put a call over the radio stating that the vehicle fled the area. Detective Donovan did not witness what happened with Officer Lee and Detective Bayas because they were some distance away from them. Moreover, Detective Donovan got lost in traffic at Fresh Pond Road and 71st Street, which is south of the location where § 87(2)(b)'s vehicle was first spotted, so he could not immediately join the pursuit with the rest of the team. Traffic was heavy at the time, so Detective Donovan made it to the intersection of 71st Street and Elliot Avenue before having to stop at a traffic light. It was at that time that Detective Donovan spotted § 87(2)(b)'s vehicle, which was heading south. § 87(2)(b) sped through a red light and came just short of directly hitting the side of Detective Donovan's vehicle. Detective Donovan then put his police light on and joined the pursuit. § 87(2)(b) drove on the sidewalk and up into the driveways of the houses on the block. § 87(2)(b) drove through red lights. § 87(2)(b) then turned onto 77th Street, which is a northbound one-way street. § 87(2)(b) was headed southbound. The passenger of his vehicle, § 87(2)(b) was hanging out of the passenger window and throwing what Detective Donovan believed to be heroin onto the lawns of the houses along 77th Street. The packages were white and they were wrapped in plastic. They looked like what Detective Donovan referred to as "sleeves" of heroin. The typical sleeve of heroin is about two inches wide by eight inches long and contains approximately one hundred glassines of heroin. Detective Donovan believed that § 87(2)(b) threw numerous sleeves out of his window. Near the end of the incident the non-injured members of the field team as well as some of the uniformed officers that had arrived attempted to retrieve the narcotics, but none of the narcotics was ever recovered.

§ 87(2)(b) turned onto 80th Street and drove along Juniper Valley Park. § 87(2)(b) was going approximately 30 miles per hour, but because the roads were icy, it appeared as if he was going faster. 80th Street is wider than the other streets they drove down, so Detective Donovan was able to pull ahead of § 87(2)(b)'s vehicle and stop on an angle in front of it with the passenger side of his vehicle towards § 87(2)(b)'s vehicle. The roads were icy so § 87(2)(b)'s vehicle began to lose traction. § 87(2)(b) stopped for a second. § 87(2)(b)

§ 87(2)(b) then rammed his vehicle into the side of Detective Donovan's vehicle, striking it in the area between the passenger side doors. Detective Donovan and Sergeant Kearney were still inside of the vehicle. The force of the blow caused the doors of Detective Donovan's vehicle to be dented. § 87(2)(b) then put the vehicle in reverse and hit the field team's black Explorer, which had parked behind § 87(2)(b)'s vehicle. The officers were inside of the vehicle at the time. § 87(2)(b)'s vehicle hit the front part of the black Explorer. Detective Donovan did not know the extent of the damage to the black Explorer. Detective Donovan saw a flash and smoke and later realized that the airbags of the black Explorer had deployed. Detective Donovan did not see any damage to § 87(2)(b)'s vehicle.

Detective Donovan exited his vehicle and approached the driver's side of § 87(2)(b)'s vehicle. Detective Donovan did not have his gun drawn and did not witness any other officers with their guns drawn. § 87(2)(b) was looking out of his rear window, so Detective Donovan opened the driver's side door, identified himself as an officer, and attempted to turn the car off. Detective Donovan's left hand was on the door frame, so § 87(2)(b) slammed the door on Detective Donovan's hand two or three times. § 87(2)(b) then put the vehicle in drive and began to move forward. § 87(2)(b) did not drag Detective Donovan, but he did pull him about one or two feet. At that time, Detective Donovan dove over § 87(2)(b)'s lap to try and put the car in park. Detective Donovan was concerned that § 87(2)(b) could have another weapon, but at that time, he had to control the situation at hand, mainly the fact that § 87(2)(b)'s vehicle was still in drive. As Detective Donovan attempted to put the car in park and turn it off, § 87(2)(b) pushed his hands and arms, and slapped Detective Donovan in the side of his head, his arms, and his hands. § 87(2)(b) repeatedly told Detective Donovan to get off him. Detective Donovan was eventually able to put the vehicle in park or turn off the ignition. Detective Donovan opened the driver's side door, wrapped his arms around § 87(2)(b) and pulled him backwards out of the vehicle. As he did so, Detective Donovan's feet slipped from under him, and they fell to the ground. By that time, additional officers had arrived at the scene. Detective Donovan maintained his hold on § 87(2)(b)'s arms, and told the officers around him to grab § 87(2)(b)'s arms. § 87(2)(b) still tried to move his arms around so that he would not be handcuffed. Someone was eventually able to handcuff § 87(2)(b) but Detective Donovan did not know who it was. Detective Donovan did not see any other officers using any other force to handcuff § 87(2)(b). At no point did Detective Donovan hit, kick, or otherwise strike § 87(2)(b) in his head or on any other part of his body.

Detective Donovan did not know if § 87(2)(b) was injured because he did not get a chance to really look at him. § 87(2)(b) did not complain of pain or injury. Detective Donovan viewed § 87(2)(b)'s arrest photo, and stated that he did not know where § 87(2)(b) sustained his injuries. Detective Donovan speculated that § 87(2)(b) could have hit his face when he rammed his vehicle into the police vehicles. Detective Donovan also viewed § 87(2)(b)'s arrest photo. Detective Donovan could not say when or how § 87(2)(b) obtained his injuries. Detective Donovan did not interact with § 87(2)(b) and he did not witness any officers interacting with § 87(2)(b).

Detective Donovan left the scene of the incident and went straight to § 87(2)(b) Hospital to be treated for injuries to his left hand. Detective Donovan suffered contusions and lacerations that he believed were caused when § 87(2)(b) slammed the door on his hand and when they fell to the ground. Four or five other officers were injured, but Detective Donovan did not know who they were or how they were injured. Detective Donovan did remember that one officer had neck injuries and another had shoulder injuries.

Witness Officers Not Interviewed

Detective Haines, Detective Paltoo, and Officer Hawkins were injured in this incident. These officers were from the second responding police vehicle, the black Explorer. According to their AIDED reports, Detective Haines suffered a sprained back, Detective Paltoo suffered a sprained back and a sprained neck, and Officer Hawkins suffered both a sprained back and a sprained neck (enc. 32A-E, 34A-E, 35A-E). Based on the circumstances of the incident and the consistency of the officer statements and documents, however, the CCRB did not interview Detective Haines, Detective Paltoo, and Officer Hawkins. Their statements would not have affected the dispositions of the allegations.

Police Department Documents

The Queens North Narcotics Roll Call shows that Officer Lee, Detective Esposito, Detective Bayas, Sergeant Kearney, and Detective Donovan were all on duty (enc. 37). The tactical plan for February 15, 2007 shows that Detective Donovan and Sergeant Kearney were assigned to an unmarked blue Ford Explorer, Officer Lee and Detective Bayas were assigned to an unmarked silver Toyota, Detective Esposito was assigned to the prisoner van, and three other members of the field team were assigned to a black Ford Explorer. § 87(2)(e), § 87(2)(f)

allegation and the damaged property allegation are pleaded against Officer Lee. The strip-search allegation is pleaded against Detective Esposito. Because of the circumstances surrounding the force allegation, it is pleaded against “Officers.”

Undisputed Facts

On February 15, 2007, at approximately 7:00PM, § 87(2)(b) and § 87(2)(b) were in the vicinity of 69th Street and 59th Drive in Queens when Officer Lee approached their vehicle. When Officer Lee attempted to stop the vehicle, § 87(2)(b) the driver, pulled away. As § 87(2)(b) did so, Officer Lee pulled out his asp and struck the rear passenger window. The rest of the Queens North Narcotics field team, including Sergeant Kearney and Detective Donovan, chased § 87(2)(b) through the streets in their vehicles. They caught up to § 87(2)(b) at the intersection of 80th Street and Juniper Valley Boulevard. Once at the intersection, officers dragged § 87(2)(b) out of the vehicle. § 87(2)(b) and § 87(2)(b) were apprehended and taken to the 104th Precinct. Both men suffered injuries at some point during the incident and were later taken to § 87(2)(b) Hospital to be treated for those injuries.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation A) Officer James Lee drew his gun.

As stated in the assessment of evidence, Officer Lee had his gun drawn when he approached § 87(2)(b)'s vehicle. Therefore, the issue is not whether or not Officer Lee drew his gun, but if in doing so he acted in misconduct. According to Barry Kamins' *New York Search & Seizure*, when dealing with a stopped vehicle, the police can "draw their weapons if they have reason to believe that the occupants of the car have committed a serious crime, not necessarily involving the use of guns, and the circumstances of the stop present a substantial risk to the officers" (enc. 1). § 87(2)(b), § 87(2)(g), § 87(2)(e), § 87(2)(f)

Allegation B) Officer James Lee damaged § 87(2)(b)'s property.

§ 87(2)(b) Officer Lee and Detective Bayas all agreed that Officer Lee struck a window on § 87(2)(b)'s vehicle, causing it to break. Officer Lee stated that he feared that the vehicle was going to hit him so he struck the window because he believed that doing so would "protect his life." Officer Lee, however, could not articulate a reason why breaking the window would "protect his life." Even if Officer Lee believed that the vehicle was going to hit him, breaking a window on the *passenger* side of the vehicle would not prevent § 87(2)(b) the *driver* of the vehicle from hitting him with the car. In the time that it took Officer Lee to brandish his asp and hit the window, the car could have already hit him. Moreover, Officer Lee noted that while he approached the *front* passenger side of the vehicle, he struck a window on the *rear* passenger side of the vehicle, suggesting that the front part of the vehicle had already passed him and bringing into question whether or not § 87(2)(b) was actually driving towards Officer Lee as he fled the scene or if he was driving away from him. In any event, the vehicle did not stop moving and continued forward and as both § 87(2)(b) and Officer Lee noted, the car did not hit Officer Lee and he emerged from the incident uninjured.

There was no reason to believe that breaking the window would serve any legitimate purpose, as far as "protecting" Officer Lee's life. By breaking the window, Officer Lee did not alleviate the threat of danger. In fact, Officer Lee increased the potential for danger by introducing a number of possible scenarios in which § 87(2)(b) could have lost control of his vehicle and actually struck Officer Lee, any cars that were in the area, or any other civilians who may have been in the area. Any of these scenarios could have been fatal for § 87(2)(b)

Officer Lee, and any other individual that could have been affected. § 87(2)(g)

Allegation C) Officers used physical force against § 87(2)(b)

As stated in the assessment of evidence, officers dragged § 87(2)(b) out of his vehicle, but it is unclear if they punched him in the face or kicked him in the back of the head. Moreover, it is unclear how § 87(2)(b) obtained the lacerations to his face and the back of his head. § 87(2)(b), § 87(2)(g)

According to the NYPD's *Scale of Escalating Force*, when a civilian engages in "threatened or potential lethal assault," officers can draw and/or display their firearms (enc. 2). Similarly, when a civilian engages in "physical assault likely to cause physical injury," officers are permitted to use "impact techniques" such as "batons, fists, and feet" to gain compliance (enc. 2). In situations where a civilian is grappling, pulling, and pushing away, officers can use, "wrestling holds and grips designed to physically overpower subjects" to gain compliance (enc. 2). The officers alleged that § 87(2)(b) resisted for the entirety of the incident. After § 87(2)(b) used his vehicle to hit the two police vehicles, Sergeant Kearney and Detective Donovan had to drag § 87(2)(b) out of his vehicle because he would not exit on his own. The relevant arrest paperwork, complaint report, and AIDED reports show that several officers were injured as a result of § 87(2)(b)'s various acts of resistance. § 87(2)(b)'s medical records note lacerations to his face and the back of his head, but there are no documented broken bones, refuting his claim that his nose was broken as a result of the force used. § 87(2)(b), § 87(2)(g)

Allegation D) An officer used physical force against § 87(2)(b)

§ 87(2)(b) made a force allegation on § 87(2)(b)'s behalf, claiming that an unidentified officer kicked § 87(2)(b) in his left eye causing an injury to that eye. As stated above, the investigator attempted to contact § 87(2)(b) by phone and by mail, but he did not respond. § 87(2)(g)

Allegation E) Detective Vincent Esposito strip-searched § 87(2)(b)

§ 87(2)(b) alleged that Detective Esposito and an unidentified male officer strip-searched him inside of the 104th Precinct. Detective Esposito denied the allegation, and stated that he searched § 87(2)(b) before transporting him to the hospital, but never removed any article of clothing or had § 87(2)(b) remove clothing. Thus, it is unclear if § 87(2)(b) was strip-searched.

According to Patrol Guide Procedure 208.05, "a strip-search will be utilized when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods" (enc. 3A-B). Additional factors that are considered in determining if a strip-search is necessary include "arrest circumstances" and "discoveries from previous searches" (enc. 3A-B). § 87(2)(e), § 87(2)(f)

As noted on the relevant arrest paperwork, as the officers pursued § 87(2)(b) and § 87(2)(b) in a car chase, § 87(2)(b) appeared to dump the drugs onto the side of the street. Moreover, when the vehicle was searched incident to the lawful arrest, heroin and cocaine was found inside of the vehicle. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: